

SENATE BILL 742

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By: **Senator Kittleman**

Introduced and read first time: February 3, 2012

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Average Weekly Wage – Contest of Determination**

3 FOR the purpose of authorizing an employer, an employer's insurer, or the Uninsured
4 Employers' Fund to contest the average weekly wage of a covered employee as
5 determined by the Workers' Compensation Commission by filing wage
6 statements with the Commission; requiring, under certain circumstances, the
7 employer, the employer's insurer, or the Fund to continue to pay workers'
8 compensation benefits to a covered employee based on a certain average weekly
9 wage; requiring the Commission to modify the average weekly wage of a covered
10 employee and issue a certain modified order under certain circumstances;
11 prohibiting the employer, the employer's insurer, or the Fund from receiving a
12 credit for an overpayment of benefits under certain circumstances; and
13 generally relating to the contest of the average weekly wage of a covered
14 employee as determined by the Workers' Compensation Commission.

15 BY repealing and reenacting, with amendments,
16 Article – Labor and Employment
17 Section 9–602(a)
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2011 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Labor and Employment**

23 9–602.

24 (a) (1) Except as otherwise provided in this section, the average weekly
25 wage of a covered employee shall be computed by determining the average of the
26 weekly wages of the covered employee:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) when the covered employee is working full time; and

2 (ii) at the time of:

3 1. the accidental personal injury; or

4 2. the last injurious exposure of the covered employee to
5 the hazards of an occupational disease.

6 (2) For purposes of a computation under paragraph (1) of this
7 subsection, wages shall include:

8 (i) tips; and

9 (ii) the reasonable value of housing, lodging, meals, rent, and
10 other similar advantages that the covered employee received from the employer.

11 (3) If a covered employee establishes that, because of the age and
12 experience of the covered employee at the time of the accidental personal injury or last
13 injurious exposure to the hazards of the occupational disease, the wages of the covered
14 employee could be expected to increase under normal circumstances, the expected
15 increase may be taken into account when computing the average weekly wage of the
16 covered employee under paragraph (1) of this subsection.

17 **(4) (I) AN EMPLOYER, AN EMPLOYER'S INSURER, OR THE**
18 **UNINSURED EMPLOYERS' FUND MAY CONTEST THE AVERAGE WEEKLY WAGE OF**
19 **A COVERED EMPLOYEE AS DETERMINED BY THE COMMISSION BY FILING WAGE**
20 **STATEMENTS WITH THE COMMISSION.**

21 **(II) THE EMPLOYER, THE EMPLOYER'S INSURER, OR THE**
22 **UNINSURED EMPLOYERS' FUND SHALL CONTINUE TO PAY BENEFITS TO A**
23 **COVERED EMPLOYEE BASED ON THE AVERAGE WEEKLY WAGE OF THE COVERED**
24 **EMPLOYEE AS ORIGINALLY DETERMINED BY THE COMMISSION UNTIL THE**
25 **COMMISSION DETERMINES WHETHER THE AVERAGE WEEKLY WAGE OF THE**
26 **COVERED EMPLOYEE SHOULD BE MODIFIED UNDER SUBPARAGRAPH (III) OF**
27 **THIS PARAGRAPH.**

28 **(III) IF THE COMMISSION DETERMINES THAT THE ACTUAL**
29 **AVERAGE WEEKLY WAGE OF A COVERED EMPLOYEE IS LOWER THAN THE**
30 **AVERAGE WEEKLY WAGE OF THE COVERED EMPLOYEE AS ORIGINALLY**
31 **DETERMINED BY THE COMMISSION, THE COMMISSION SHALL:**

32 1. **MODIFY THE AVERAGE WEEKLY WAGE OF THE**
33 **COVERED EMPLOYEE; AND**

1 **2. ISSUE A MODIFIED ORDER THAT REFLECTS THE**
2 **BENEFITS OWED TO THE COVERED EMPLOYEE BASED ON THE MODIFIED**
3 **AVERAGE WEEKLY WAGE.**

4 **(IV) IF THE COMMISSION MODIFIES THE AVERAGE WEEKLY**
5 **WAGE OF A COVERED EMPLOYEE UNDER SUBPARAGRAPH (III) OF THIS**
6 **PARAGRAPH, THE EMPLOYER, THE EMPLOYER’S INSURER, OR THE UNINSURED**
7 **EMPLOYERS’ FUND MAY NOT RECEIVE A CREDIT FOR AN OVERPAYMENT OF**
8 **BENEFITS IF:**

9 **1. THE OVERPAYMENT IS ATTRIBUTABLE TO THE**
10 **AVERAGE WEEKLY WAGE OF A COVERED EMPLOYEE AS ORIGINALLY**
11 **DETERMINED BY THE COMMISSION; AND**

12 **2. THE BENEFITS WERE PAID BEFORE THE AVERAGE**
13 **WEEKLY WAGE OF THE COVERED EMPLOYEE WAS CONTESTED UNDER**
14 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2012.